

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs

Case No: 10-20123
Honorable Victoria A. Roberts

DAVID STONE, ET AL,

Defendants.

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**ORDER DENYING MOTION TO BAR THE USE OF
TRANSCRIPTS OF RECORDED CONVERSATIONS AND
SETTING SCHEDULE REGARDING EXCHANGE OF DISCOVERY**

David Brian Stone moves to Bar the Use of Transcripts of Recorded Conversations (Doc. #519). The Court heard oral argument on January 31, 2012. The Defendants' Motion is **DENIED**.

The Defense says no transcripts should be admitted because the tapes are clear. The Government wants all of the transcripts to come in, not because the tapes are unclear, but to aid the orderly presentation of evidence. The Court agrees that transcripts may be necessary and will allow their use.

It is within the Court's discretion to admit tapes into evidence. *United States v. Robinson*, 763 F.2d 778, 781 (6th Cir. 1985). "Tape recordings are generally admissible unless the incomprehensible portions of the tapes are so substantial as to render the recordings as a whole untrustworthy." *Id.* It is also within the Courts discretion to allow the use of transcripts. *United States v. West*, 948 F.2d 1042, 1044

(6th Cir. 1991), *cert.denied*, 502 U.S. 1109 (1992). Courts have found admission of tape recordings and transcripts is not prejudicial error unless an inaccuracy is found to exist in the transcript. *United States v. Crane*, 632 F.2d 663, 664 (6th Cir. 1980). The Sixth Circuit has set forth procedures for the Court to follow in order to determine accuracy. *United States v. Robinson*, 707 F.2d 872, 876 (6th Cir. 1983). The parties may stipulate to the accuracy of the transcript. *Id.* In the absence of stipulation, the Court should make an independent determination after reviewing the transcript while listening to the tapes. *Id.* Lastly, each party may offer his or her interpretation of the transcript to the jury. *Id.*

The Government submitted two tape recordings at oral argument, labeled Exhibit 17-T and Exhibit 27-T. The Court listened to the recordings without the benefit of the transcript. The Court was not able to understand everything that was said. The Court is certain that jurors would have similar difficulty.

If the transcripts were prepared after the transcriber listened to the tapes carefully, and the transcriber attests to their accuracy, the only issue becomes whether the transcripts are accurate. Counsel must make a determination regarding accuracy. If the recordings are clear, the defense must stipulate to the accuracy of the corresponding transcripts. If the parties are unable to reach agreement regarding accuracy, and specific portions of the recordings and transcripts have been identified as inaccurate, the Court will listen to the tapes, read the transcripts, and make a decision. The parties may not follow the third and least preferred method outlined in *Robinson*, which is to present two different versions of the transcripts to the jury.

The Government says only the recordings that relate to the confidential

informant—which make up approximately one third of the total recordings—are prepared and ready for trial. The Government must provide the defense with the recordings and corresponding transcripts that have been prepared to date, by **5:00 P.M., January 31, 2012**. The Government must take care to turn over only the segments of the recordings and the corresponding portions of the transcripts the Government intends to introduce at trial. The Government has until **5:00 P.M., February 3, 2012** to turn over the remaining portions of the recordings, with time markers, that correspond to transcripts.

The Parties must submit a list of transcripts that are accurate by **9:00 A.M., February 6, 2012**. The Defendants' must submit a list of objectionable transcripts, along with corresponding tapes, by **9:00 A.M., February 6, 2012**.

The Defendants' motion is **DENIED**. The Court will allow the jurors to use transcripts that accurately summarize audio tapes. The Court will not allow transcripts to be used that are of inaudible or unintelligible tapes.

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: January 31, 2012

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on January 31, 2012.

S/Linda Vertriest
Deputy Clerk